

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 32242, 32243, 32245, 46010.1; 48904, 48904.3, 48987
Welfare and Institutions Code Section 18285
Statutes 1983, Chapter 498; Statutes 1984, Chapter 482; Statutes 1984, Chapter 948;
Statutes 1986, Chapter 196; Statutes 1986, Chapter 332; Statutes 1992, Chapter 445;
Statutes 1992, Chapter 1317; Statutes 1993, Chapter 589; Statutes 1994, Chapter 1172;
Statutes 1996, Chapter 1023; Statutes 2002, Chapter 492
Title 5, California Code of Regulations, Section 11523

Pupil Safety Notices

(02-TC-13)

San Jose Unified School District, Claimant

EXECUTIVE SUMMARY

Staff will insert the Executive Summary in the Final Analysis.

STAFF ANALYSIS

Claimant

San Jose Unified School District (Claimant)

Chronology

02/21/03 Claimant files test claim with the Commission¹
05/20/03 DOF requests an extension of time to file comments
05/21/03 Commission staff grants extension request
06/13/03 DOF files comments on the test claim
06/27/03 Claimant files rebuttal to state agency comments
08/17/06 Commission staff issues the draft staff analysis

Background

This test claim consolidates legislation concerning school districts' obligations to provide notices and information regarding health, safety and legal issues to staff, parents, guardians and students. For purposes of this analysis the test claim legislation has been separated into two categories designated and discussed below as the "Notice Legislation" and the "Due Process Legislation."

"Notice Legislation"

The "Notice Legislation" generally requires school districts for the first time, to provide notices to parents, staff, and pupils regarding:

- Lead contamination risk factors in public schools.²
- Excused absences for confidential medical procedures.³
- Child abuse guidelines and notification procedures.⁴
- The high school proficiency exam.⁵

¹ Pursuant to Government Code section 17557, if claimant's test claim is approved, school districts may be reimbursed for the period beginning July 1, 2001.

² Education Code sections 32242, 32243 and 32245 added by Statutes 1992, chapter 1317 and amended by Statutes of 1993, chapter 589, Assem. Bill No. 2211, (AB 2211) section 37.

³ Education Code section 46010.1 added by Statutes 1986, chapter 196, effective June 27, 1986.

⁴ Education Code section 48987 added by Statutes 1994, chapter 1172, Assem. Bill No. 2971 (AB 2971), section 13.

⁵ Title 5, California Code of Regulations, section 11523, filed September 15, 1978 as an emergency; effective upon filing (Register 78, No. 37.)

“Due Process Legislation” (Ed. Code, § 48904 and 48904.3)

This test claim also addresses legislation permitting school districts to withhold a student’s transcripts, grades and diploma if the student has willfully damaged or failed to return school property. For purposes of this analysis this legislation is referred to collectively as the “Due Process Legislation.” The “Due Process Legislation” provides as follows:

- Education Code section 48904, subdivision (a)(1) states that:

Notwithstanding Section 1714.1 of the Civil Code⁶, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ten thousand dollars (\$10,000). The parent or guardian shall also be liable for the amount of any reward not exceeding ten thousand dollars (\$10,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.
- Education Code section 48904, subdivision (b)(1) states that:

Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned ...*may* after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a). (Emphasis added.)
- Education Code section 48904, subdivision (b)(2) states that if the school decides to withhold grades:

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school

⁶ California Civil Code section 1714.1 imposes joint and several liability upon a minor and his or her parents or guardians for willful misconduct of the minor. The liability imposed by this section is in addition to any liability now imposed by law.

shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

- Education Code section 48904 subdivision (b)(3) states that:

The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

- Education Code section 48904.3, subdivision (a) states that:

Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until the time that it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.

- Education Code section 48904.3, subdivision (b) states that:

Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program and is seeking reimbursement for the following activities:

Lead Notice

- “For public elementary schools to notify teachers, other school personnel and parents of the results of surveys developing risk factors to predict lead contamination conducted by the State Department of Health Services pursuant to Education Code section 32242, subdivision(c).”⁷
- “For public elementary schools to notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code section 32243, subdivision (a).”⁸

⁷ Test Claim of San Jose Unified School District, page 20.

⁸ Test Claim of San Jose Unified School District, page 20. The Lead Poisoning Prevention Act of 1991, (Health & Saf. Code § 105272) provides in pertinent part that the

- “For public elementary principals or the director of the school site to notify teachers, other personnel and the parents of a finding of significant risk factors for lead, within 45 days of receiving the finding, pursuant to Education Code section 32243, subdivision (a).”⁹

Medical Services Notice

- “For the governing board of each school district to “notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the district that the school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services pursuant to Education Code section 46010.1.”¹⁰

Notice of Child abuse Complaint Guidelines

- “To disseminate guidelines upon request, that describe complaint procedures adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site, pursuant to Education Code section 48987.”¹¹
- “To provide an interpreter for a parent of guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site, pursuant to Education Code section 48987.”¹²

High School Proficiency Exam Notice

- “To distribute to each pupil in grades 11 and 12 an announcement explaining the High School Proficiency Exam in sufficient time to meet registration requirements pursuant to Title 5, California Code of Regulations, Section 11523.”¹³

Due Process/ Withholding of Grades, Transcripts and Diplomas for Student Misconduct

- “To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the

Department of Health Services , before July 1, 1993, shall adopt regulations establishing a standard of care for evaluation, treatment, and monitoring of lead poisoning in children.

⁹ *Ibid.*

¹⁰ *Id.* at page 19.

¹¹ *Id.* at page 20.

¹² *Ibid.*

¹³ *Id.* at page 18.

provision of voluntary work programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b).”¹⁴

- “To provide a program of voluntary work for a minor pupil in lieu of the payment of monetary damages in the event the minor and the parent are unable to pay for the damage caused by the student, pursuant to Education Code section 48904, subdivision (b).”¹⁵
- “To notify the parent or guardian of a pupil, in writing, of the pupil’s alleged misconduct before withholding the pupil’s grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b).”¹⁶
- “To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b).”¹⁷
- “To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school as a result of his or her misconduct, pursuant to Education Code Section 48904.3, subdivision (a).”¹⁸
- “Upon receiving notice that a pupil, whose grades, diploma or transcripts are currently withheld, has transferred to another school district in this state to notify the parent or guardian that a decision to withhold a pupil’s grades diploma or transcripts will be enforced by his or her new school district, pursuant to Education Code section 48904.3, subdivision (b).”¹⁹

Position of the Department of Finance

The Department of Finance (DOF) concurs with claimant’s position regarding the “Notice Legislation” but disagrees with regard to the “Due Process Legislation.”²⁰ For example, the DOF letter dated June 13, 2003,²¹ states that:

As a result of our review we have concluded that parts D, E and G of Section 2: Withholding Grades, Diplomas, or Transcripts do not constitute reimbursable costs because these actions are required only if a school district chooses to withhold a pupil’s grades, diploma, or transcripts...Therefore withholding grades, diplomas and transcripts is permissive and any activities required are non-reimbursable.

¹⁴ Test Claim of San Jose Unified School District, page 18.

¹⁵ *Ibid.*

¹⁶ Test Claim of San Jose Unified School District, page 19.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Letter from the Department of Finance, June 13, 2003.

²¹ *Ibid.*

The June 13, 2003 letter from the DOF further states that:

Part B of Section 2 seeks reimbursement for costs associated with adopting and implementing rules and regulations, and periodically updating those rules and regulations governing: (1) notices to parents when school property has been damaged by a student, (2) providing due process rights to those students, (3) the provision of voluntary work programs, and (4) the withholding of grades, diplomas, and transcripts, pursuant to Education Code 48904, subdivision (b). All of these provisions are conditioned upon districts' decisions to seek payment for damages and return of property and the withholding of grades. Thus all activities are discretionary and not reimbursable. We concur with claimants that Sections 1, 3, 4, and 5 identify changes that impose new requirements.

No further comments have been filed by interested parties regarding this claim.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution²² recognizes the state constitutional restrictions on the powers of local government to tax and spend.²³

Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.²⁴

A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²⁵

²² Article XIII B, section 6, subdivision (a) of the California Constitution provides that:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

- (1) Legislative mandates requested by the local agency affected.
- (2) Legislation defining a new crime or changing an existing definition of a crime.
- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

²³ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

²⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155,

In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.²⁶

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²⁷

To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²⁸ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”²⁹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.³⁰

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³¹ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³²

Thus this test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

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²⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878. *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; See also *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

³⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

³¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

³² *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

- Do the test claim statutes and executive order constitute a “new program or higher level of service” for school districts within the meaning of Article XIII B, section 6 of the California Constitution?
- Do the test claim statutes and executive order “cost mandated by the state” within the meaning of Government Code sections 17514 and 17556?

These issues are addressed below:

Issue 1: Does the claim statutes and executive order subject to article XIII B, section 6 of the California Constitution?

Does the Test Claim Legislation Impose State-Mandated Activities?

In order for test claim legislation to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the school district to perform a task then article XIII B, section 6, does not apply.

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute....If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]³³

The “Notice Legislation”

Notice of Lead Contamination Risk Factors

The test claim legislation involving notice of lead contamination risk factors arises in the context of the “Lead-Safe Schools Protection Act”(1992) (the “Act”) (Ed. Code §§ 32240-32245). The “Act” provides for sample surveys by the state Department of Health Services (DHS) to develop risk factors to predict lead contamination in public schools and then requires DHS to notify local school districts of the results.³⁴ Then, when notified by DHS, local school districts must in turn notify school employees, pupils and parents of both the DHS lead survey results and/or of the Childhood Lead Poisoning Prevention Act of 1991.³⁵ Relevant portions of this legislation are discussed below.

³³ *Whitcomb v. California Employment Commission* (1944) 24 Cal. 2d 753,757.

³⁴ For purposes of the Act “schools” means public elementary schools as well as preschools, and day care facilities located on school property. (Ed. Code, § 32241 subds. (b)-(c).)

³⁵ Health and Safety Code, section 105272.

Education Code section 32242, subdivision (c) states that:

Within 60 days of the completion of testing of a school site, the Department shall notify the principal of the school or the director of the school site of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the survey results.

Education Code section 32243, subdivision (a) states that:

When a school subject to this article has been determined to have significant risk factors for lead...the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Chapter 5 (commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the school site shall notify the teachers, other personnel, and the parents of the finding.

Here, based upon the plain language of Education Code section 32242, subdivision (c) and Education Code section 32243, subdivision (a) staff finds that the following are mandated activities subject to article XIII B, section 6, of the California Constitution:

- For the principal of the school site to, within 45 days of receiving lead test survey results from the Department of Health Services to notify the teachers and other school personnel and parents of the survey results pursuant to Education Code section 32242, subdivision (c).
- For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code Section 32243, subdivision (a).
- For schools to, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has a significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding.

Notice/Confidential Medical Services:

Education Code section 46010.1 is a stand alone provision of the Education Code in that it is not part of a larger act.

Education Code section 46010.1 states that:

Commencing in the fall of 1986-87 academic year, the governing board of each school district shall, each academic year, notify pupils in grades 7-12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian. The notice required pursuant to this section may be included with other notices.

Based upon the plain language of Education Code section 46010.1, staff finds that the following is a mandated activity subject to article XIII B, section 6, of the California Constitution:

- For the governing board of each school district to, each academic year, notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the district, inclusive, that school authorities may excuse any pupil for the purpose of obtaining confidential medical services pursuant to Education Code section 46010.1. The notice may be included with other notices.

Therefore, the state-mandated activity is a one-time activity to amend an existing notice to add the provision.

Notice/Child Abuse Reporting/ Interpreters

Education Code section 48987 states in pertinent part that:

The governing board of a school district or county office of education shall *upon request* disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 [Describing procedures a parent or guardian can follow in filing a complaint of child abuse] to parents or guardians of minor pupils in the primary language of the parent or guardian...In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian. (Emphasis added.)

The language omitted from the quotation of Section 48987 above, is indicated by the ellipsis. It reads:

The governing board of a school district or county office of education is *encouraged* to inform a parent or guardian, that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a pupil at a school site, of the procedures for filing the complaint with local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. (Emphasis added.)

In this case, Claimant claims no entitlement to reimbursement for the “encouraged” activity. Nor is there any dispute that this language does not impose a state-mandated activity.³⁶

Thus, based upon the plain language of Education Code section 48987 staff finds that the following are mandated activities subject to article XIII B, section 6, of the California Constitution:

- To disseminate guidelines, upon request, that describe complaint procedures adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can

³⁶ See Test Claim of San Jose Unified School District at page 11. See also Declaration of Don Iglesias, Associate Superintendent of Instruction, San Jose Unified School District, February 2, 2003, at pages 3 and 4.

follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site, pursuant to Education Code section 48987.

- To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site, pursuant to Education Code section 48987.

Notice/High School Proficiency Exam

Title 5, California Code of Regulations, section 11523, references section 48410 subdivision (e) and 48412 of the Education Code. These sections exempt students age 16 or older from compulsory continuing education if the pupils have demonstrated the required proficiency by passing the High School Proficiency Exam. Students who pass this exam receive a certification of proficiency. This certification is not a high school diploma, and requirements for this certification are not related to the requirements for the High School Exit Exam.³⁷

California Code of Regulations, section 11523 implements provisions of the Education Code pertaining to the High School Proficiency Exam by requiring notices to be sent out as specified in this regulation.

Title 5, California Code of Regulations section 11523 states that:

The school district superintendent shall require the principal of each school maintaining either or both of grades 11 and 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Examination provided for under Education Code section 48412. Upon receipt of the announcements from the State Department of Education or its contractor, distribution shall be made in time sufficient to enable interested pupils to meet all examination registration requirements for the fall test of that year.

Here, based upon the plain language of California Code of Regulations, section 11523 staff finds that the following is a mandated activity subject to article XIII B, section 6, of the California Constitution:

- For the principal of each school maintaining either or both grades 11 and 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year pursuant to Title 5, California Code of Regulations, section 11523.

The “Due Process” Test Claim Legislation:

In addition to the “Notice Legislation,” this test claim also addresses legislation permitting school districts as well as private schools to withhold the transcripts, grades and diploma of a student who has willfully damaged or failed to return school property,

³⁷ Education Code section 60851.

after affording the student certain due process rights.³⁸ These provisions, collectively referred to in this analysis as the “Due Process Legislation,” are codified in Education Code sections 48904 and 48904.3 and are located within the same section of the Education Code containing statutory provisions concerning student suspension and expulsion.³⁹

Claimant is requesting reimbursement for the following six activities based upon the “Due Process” test claim legislation:⁴⁰

- “To notify the parent or guardian of a pupil, of the pupil’s alleged misconduct before withholding the pupil’s grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b).”
- “To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b).”
- “To provide a program of voluntary work under specified circumstances pursuant to Education Code section 48904, subdivision (b).”
- “To notify the parent or guardian that a decision to withhold a pupil’s grades diploma or transcripts will be enforced by the pupil’s new school district, pursuant to Education Code section 48904.3, subdivision (b).”
- “To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the provision of voluntary work programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b)(3).”
- “To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school pursuant to Education Code Section 48904.3, subdivision (a).”

In order for the test claim legislation to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies.

³⁸ Statutes 2002, chapter 492, added subdivisions (c) and (d) to Education Code section 48904.3. Subdivision (c) of section 48904.3 now states that: “For purposes of this section and Section 48904, “school district” is defined to include any county superintendent of schools.” And subdivision (d) of this section now states that: “This section and section 48904 shall also apply to state special schools, as described in Subdivision (a) of section 48927.” Education Code section 48927, subdivision (a) describes state special schools and states: “This chapter shall also apply to pupils attending the California School for the Blind and the two California Schools for the Deaf, which shall be referred to as the “state special schools.”

³⁹ Article 1, chapter 6, part 27, division 4, title 2 of the Education Code.

⁴⁰ See Test Claim of San Jose Unified School District, pages 18-19.

In 2003, the California Supreme court decided the case, *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern High School District*) and considered the meaning of “state -mandate” pursuant to article XIII B, section 6 of the California Constitution.⁴¹ In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site counsels and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term “state-mandate,” the court reviewed the ballot materials for article XIII B, which provided that “a state mandate comprises something that a local government entity is forced to do.”⁴² The ballot summary by the Legislative Analyst further defined “state mandates” as “requirements imposed on local governments by legislative or executive orders.”⁴³

The court also reviewed and affirmed the holding in *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777, determining that, when analyzing state-mandated claims, the Commission must look at the underlying program to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.⁴⁴ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain, but when it elected to employ that means of acquiring property; its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable mandate. (Emphasis in original.)⁴⁵

Thus, the Supreme Court held as follows:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant’s*

⁴¹ *Kern High School Dist.* (2003) 30 Cal. 4th 727, 734.

⁴² *Id.* at page 737.

⁴³ *Ibid.*

⁴⁴ *Id.* at page 743.

⁴⁵ *Ibid.*

participation in the underlying program is voluntary or compelled.
[Emphasis added.]⁴⁶

Based upon the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.⁴⁷

In *San Diego School District v. Commission on State Mandates* (2004) 33 Cal 4th 859, 880, the Supreme Court stated that when determining if there is a state mandate the focus is on who made the decision to incur the cost:

[I]n its mandatory aspect, Education Code section 48915 appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the cost of an expulsion hearing.

In this test claim claimant requests reimbursement:

- To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b).⁴⁸
- To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b).⁴⁹

However Education Code section 48904, subdivision (b) (1) reads:

Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand *may*, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a). (Emphasis added.)

This statute states that the school district:

...*may*, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts (Emphasis added.)

The plain use of the term “may” in this context indicates that the initial decision to withhold a student's grades, diploma, or transcripts is wholly within the discretion of the

⁴⁶ *Id.* at page 731.

⁴⁷ *Id.* at pages 744-745.

⁴⁸ Test Claim of San Jose Unified School District, page 19.

⁴⁹ *Ibid.*

school district and not the state.⁵⁰ Thus, the downstream required activities of providing notice and due process rights are not mandated by the state. For this reason staff finds that the following activities are *not* state-mandated activities within the meaning of article XIII B, section 6 of the California Constitution:

- To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b).
- To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, for student misconduct pursuant to Education Code section 48904, subdivision (b).

Claimant also requests reimbursement for the following activity:

- “To provide a program of voluntary work under specified circumstances pursuant to Education Code section 48904, subdivision (b).”⁵¹

Education Code section 48904, subdivision (b) (2) states that:

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

Although this statute uses the phrase “shall” it does so in the context of a statutory obligation that is triggered only if the claimant undertakes the activities described in Education Code section 48904, subdivision (b)(1), to withhold a student's grades transcripts or diploma. Thus, because the activity described in this subdivision is a downstream obligation triggered by claimant's own discretionary act of deciding to withhold grades, transcripts, or a diploma from a student, it cannot be said that these obligations are “mandated” by the state.⁵² Instead, they are obligations that directly flow from the discretionary action of the school district.

Thus staff finds that Education Code section 48904, subdivision (b)(2) does not impose a state-mandated activity upon the claimant to provide a program of voluntary work pursuant to article XIII B, section 6 of the California Constitution.

⁵⁰ Education Code section 75 states that “may” is discretionary and “shall” is mandatory.

⁵¹ *Id.* at page 18.

⁵² See *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal 4th 859, 880.

Claimant also requests reimbursement for the following activity:

- “Upon receiving notice that a pupil, whose grades, diploma, or transcripts are currently withheld, has transferred to another school district in this state, to notify the parent or guardian that a decision to withhold a pupil’s grades, diploma or transcript will be enforced by his or her new district, pursuant to Education Code section 48904.3, subdivision (b).”⁵³

Education Code section 48904.3, subdivision (b) states that:

Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

Here again, despite the use of the word “shall,” in Education code section 48904, subdivision (a), the obligation to perform the activity described by this subdivision (to notify the student’s parent or guardian) is triggered only if the claimant exercises its discretion to withhold the grades, diploma and transcripts of a pupil pursuant to Education Code section 48904, subdivision (b)(1).⁵⁴

Thus staff finds that Education Code section 48904.3, subdivision (b) does not impose a state-mandated activity upon the school district.

Claimant further requests reimbursement for the following activities:

- To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the provision of voluntary work programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b).⁵⁵
- To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school pursuant to Education Code Section 48904.3, subdivision (a).⁵⁶

Education Code section 48904.3, subdivision (a) states that:

Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until the time that it receives notice, from the district that initiated the

⁵³ Test Claim of San Jose Unified School District, page 18.

⁵⁴ See *San Diego Unified School District* *supra* 33 Cal. 4th 859, 880.

⁵⁵ Test Claim of San Jose Unified School District, page 18.

⁵⁶ *Id.* at page 19.

decision to withhold, that the decision has been rescinded under the terms of that section.”

And Education Code section 48904, subdivision (b) (3) states that:

The governing board of each school district...shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

These activities are not triggered by the local decision to withhold a pupil’s grades, transcripts or a diploma, but are instead mandated by the state. The district is required to comply with these requirements even if that district has not made a decision to withhold grades, transcripts or a diploma. Thus staff finds that the following are state-mandated activities subject to article XIII B, section 6, of the California Constitution:

- To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas pursuant to Education Code section 48904, subdivision (b) (3).
- For a transferee school to, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.⁵⁷

Thus, to recap, in the instant case, staff has determined that the following eight (8) activities impose state-mandated activities upon school districts within the meaning of article XIII B, section 6 of the California Constitution:

1. For the principal of the school site to, within 45 days of receiving lead test survey results from the Department of Health Services to notify the teachers and other school personnel and parents of the survey results pursuant to Education Code section 32242, subdivision (c).
2. For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code Section 32243, subdivision (a).
3. For schools to, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has a significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding.
4. For the governing board of each school district to, each academic year, notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the

⁵⁷ Education Code section 48904.3, subdivision (a).

district, inclusive, that school authorities may excuse any pupil for the purpose of obtaining confidential medical services pursuant to Education Code section 46010.1.

5. To disseminate guidelines, upon request, that describe complaint procedures, adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filling a complaint of child abuse by a school employee or other person committed against a pupil at a school site, pursuant to Education Code section 48987.
6. To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site, pursuant to Education Code section 48987.
7. For the principal of each school with students in grades 11 and/or 12 to distribute to each pupil in those grades an announcement explaining the California high School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year pursuant to Title 5, California Code of Regulations, section 11523.
8. To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas pursuant to Education Code section 48904, subdivision (b) (3).
9. For a transferee school to, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.⁵⁸

Do the State-Mandated Activities constitute “Programs” subject to Article XIII B, section 6 of the California Constitution?

In addition to being state-mandated, the test claim statutes and executive order must also constitute a “program” in order to be subject to article XIII B, section 6 of the California Constitution.

The relevant test is set forth in case law. The California Supreme Court, in the case of *County of Los Angeles v. State of California* (1987) 43 Cal 3d 46, defined the word “program” within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not

⁵⁸ Education Code section 48904.3, subdivision (a).

apply generally to all residents and entities in the state.⁵⁹ The court has held that only one of these findings is necessary.⁶⁰

In the instant case each of the above state-mandated activities meet this test to qualify as a program within the meaning of article XIII B, section 6 of the California Constitution.

Mandated activity numbers 1-7 and 9 (notices, child abuse guidelines, interpreters, and the withholding of grades, transcript, or diploma by a transferee school) meet this test by providing a service to members of the public who work in or whose children attend public schools.

And although mandated activity number 8 (adopting rules and regulations pertaining to withholding of grades, transcripts and diplomas) applies to both public and private schools, this distinction does not affect the outcome based upon the court's decision in *Long Beach Unified School District v. The State of California* (1990) 225 Cal. App. 3d 155, 172.

In *Long Beach* the appellate court stated that:

[A]lthough numerous private schools exist, education in our society is considered to be a peculiarly governmental function. [Citations] Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a "program" within the meaning of section 6.

Thus, staff finds that mandated activities 1-9 above constitute state-mandated programs subject to Article XIII B, section 6 of the California Constitution.

Issue 2: Do the (remaining) test claim statutes and executive order constitute a "new program or higher level of service" for school districts within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that legislation imposes a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution when: (a) the requirements are new in comparison with the pre-existing scheme and (b) the requirements were intended to provide an enhanced service to the public.⁶¹

To make this determination, the test claim legislation must initially be compared with the legal requirements in effect immediately prior to its enactment⁶²

In this case the test claim legislation in state-mandated programs numbers 1-9 did not exist in prior law.⁶³ And, as discussed above, each of these activities provides a service

⁵⁹ *County of Los Angeles, supra*, 43 Cal.3d, 56.

⁶⁰ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

⁶¹ *San Diego Unified School District v. Commission on State Mandates* 33 cal. 4th 859,878; *Lucia Mar Unified School District v. Bill Honig* (1988) 44 Cal 3d 830, 835.

⁶² *Ibid.*

to members of the public who work in or whose children attend public schools. Therefore staff concludes that these eight state-mandated activities are programs constituting a “new program or higher level of service” on school districts within the meaning of article XIII B, section 6 of the California Constitution.

Issue 3: Do the (remaining) test claim statutes and executive order impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

Government Code section 17514, states that:

Cost mandated by the state means any increased cost which a local agency or school district is required to incur after July 1, 1980 as a result of any statute enacted after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

However, Government Code section 17556 prohibits the Commission from finding costs mandated by the state as defined in Government Code 17514 under certain circumstances such as when a statute covers the cost of the mandated activity. Government Code section 17556, subdivision (e) states in pertinent part that:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that... (e) The statute...or an appropriation in [another] bill provides for offsetting savings to... school districts that result in no net costs to the...school districts, or includes additional revenue that was specifically intended to fund the costs of the state-mandate in an amount sufficient to fund the cost of the state mandate...

In this case there is an issue as to whether or not the Commission can find “costs mandated by the state,” for providing notices to parents, teachers and other school personnel pursuant to the Lead-Safe Schools Protection Act. This is because part of this Act, Education Code Section 32245, on its face, provides for funding of those state-mandated activities. Education Code section 32245 states that:

Funding to implement this article [The Lead-Safe Schools Act]
shall be provided from the Child Health and Safety Fund ...upon

⁶³ In addition, subsequent amendments to state-mandated programs 1-6 during the test claim period have been technical in nature and effected no substantive changes. See Statutes of 1983, chapter 589, section 36; Statutes of 1993, chapter 589, section 37; Statutes of 1993, chapter 589, section 39; Statutes of 1993, chapter 726, section 15; Statutes of 1996, chapter 1023, section 34; Statutes of 1993, chapter 726, section 15. Likewise although subdivision (a) of Education Code section 48904.3 was effectively broadened to include state special skills when Education Code section 48904.3 was amended by Statutes of 2002, chapter 492 these provisions do not apply to local school districts and thus do not affect this analysis.

appropriation by the Legislature pursuant to Section 18285 of the Welfare and Institutions Code. (Emphasis added.)

Thus Education Code section 32245 appears to trigger the provisions of Government Code section 17556 by providing for funding of a mandated activity (lead risk notices).

However, in order for Government Code section 17556, subdivision (e) to prohibit the Commission from finding costs mandated by the state, two elements must be satisfied.

First, the funding provisions of Education Code section 32245 and Welfare and Institutions Code section 18285 would have to be implemented through Budget Act appropriation to include revenue specifically intended to fund the costs of these state-mandated lead risk notices.

And second, this revenue would have to be in an amount sufficient to fund the cost of the state mandate.

Education Code section 32245 states that it was intended to fund the Lead Safe Schools Act, (which includes the lead risk notices). Thus the first element (specific intent to fund the mandate) is met with regard to the lead risk notices.

However, the second element which would require that Education Code section 32245 and Welfare and Institutions Code section 18285 be implemented through Budget Act appropriation in an amount *sufficient* to fund the cost of the lead risk notices, must also be met.

Welfare and Institutions Code section 18285, which is incorporated by reference into Education Code section 32245, creates in the State Treasury the Child Health and Safety Fund. Section 18285 states that the Child Health and Safety Fund shall be created from money collected by the state pursuant to the license plate program and from civil penalties on family day care providers. It further provides that monies in the fund shall be expended, for up to any of eleven different programs having to do with child health and safety upon appropriation by the Legislature. Subdivision (e) of Section 18285 states in pertinent part that:

(e) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code ...shall be available, *upon appropriation*, for programs which address *any* of the following [eleven] child health and safety concerns ...that are either to be carried out within a two-year period or whose implementation is dependent upon one-time initial funding:...(10) *Childhood lead poisoning*.... (Emphasis added.)

The language of subdivision (e) provides that the Legislature *may* appropriate up to 50% of the Child Health and Safety Fund to fund any of eleven different programs. Only one of which includes prevention of childhood lead poisoning. However, there is no evidence in the law or record that any amount was appropriated pursuant to Education Code section 32245 sufficient to cover the cost of the lead notices.

Claimant states that:

It is estimated that the San Juan Unified School District incurred approximately in excess of \$1000.00, annually in staffing and other costs in excess of the funding provided to school districts and the state for the period of July 1, 2000 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency.⁶⁴

There is no evidence that this is not the case.

Therefore Staff concludes that the lead risk notices are “costs mandated by the state” within the meaning of Government code sections 17514 and 17556.

However to the extent, and in the event, that funds are appropriated from the Child Health and Safety Fund pursuant to Education Code section 32245 or Welfare and Institutions Code section 18285(e), they will be identified in the parameters and guidelines as offsetting revenue.

Staff further finds that none of the exceptions in Government Code section 17556 apply to the remaining test legislation. Thus these activities also constitute “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556.

CONCLUSION

Staff concludes that the test claim statutes and executive order constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

1. For the principal of the school site to, within 45 days of receiving lead test survey results from the Department of Health Services to notify the teachers and other school personnel and parents of the survey results. (Ed. Code, § 32242, subd. (c).)
2. For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead. (Ed. Code, § 32243, subd. (a).)
3. For schools to, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has a significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding. (Ed. Code, § 32243, subd. (a).)
4. For the governing board of each school district to, each academic year, notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the

⁶⁴ Declaration of Don Iglesias, Associate Superintendent of Instruction, San Jose Unified School District; dated February 19, 2003; pages 4-5, lines 18 -21 and 1-2, respectively.

district, inclusive, that school authorities may excuse any pupil for the purpose of obtaining confidential medical services. (Ed. Code, § 46010.1.)

5. To disseminate guidelines, upon request, that describe complaint procedures, adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filling a complaint of child abuse by a school employee or other person committed against a pupil at a school site. (Ed. Code, § 48987.)
6. To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site. (Ed. Code, § 48987.)
7. For the Principal of each school with students in grades 11 and/or 12 to distribute to each pupil in those grades an announcement explaining the California high School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year. (Cal. Code Regs. tit. 5, § 11523.)
8. To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas. (Ed. Code, § 48904, subd. (b) (3).)
9. For a transferee school to, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section. (Ed. Code, § 48904.3, subd. (a).)

Staff finds that:

- Funds appropriated pursuant to Education Code, section 32245, and Welfare and Institutions Code, section 18285 shall be an offset in the Parameters and Guidelines for purposes of the lead notice activities.
- Any statutes and or executive orders that were pled in this test claim that are not identified above do not constitute a reimbursable state-mandated program.

Recommendation

Staff recommends that the Commission adopt this staff analysis and approve this claim accordingly.

